

This letter answers questions about Certificates of Resale and exemption identification ("E") numbers. See 86 Ill. Adm. Code Sections 130.1405 and 130.2007. (This is a GIL).

April 22, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated April 14, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We are a distributor of material handling and office products and have several customers who purchase from us for resale. Do you honor another State's resale certificate if material is drop shipped into your state from our Vendors?

In my experiences, I have found several states that will accept a Resale from the origin state of purchase.

Please fax me the statute on this for future reference.

Also, please advise if Publication 104 Dated in 1995 is still valid and that if a customer supplies us with a "E" number only this is considered acceptable by the State of Illinois for exemption purposes.

In a typical drop-shipment situation, a seller (A) makes a sale to an out-of-State company (B) and drop-ships the items to B's customer (C) located in Illinois. Company A (seller) has nexus with Illinois sufficient to require it to collect Use Tax on tangible personal property delivered to Illinois locations and it is registered with Illinois. Also, Company B (buyer) is not registered with Illinois.

As a seller required to collect the Illinois tax, A must either charge tax or document an exemption when it makes a delivery in Illinois. In order to document the fact that the sale to B is a sale for resale, A must obtain a valid Illinois Certificate of Resale from its customer (B). The fact that B may be located in another state is immaterial and does not change the requirement for B to provide a valid Certificate of Resale to A. Because the sale involves a delivery to an Illinois location, the Certificate of Resale must be valid in Illinois and contain the items of information listed in 86 Ill. Adm. Code 130.1405(b), enclosed. If Company B does not provide acceptable Illinois documentation, seller A will be required to charge and collect tax from B on A's gross receipts from the transaction.

If B has no nexus whatever with Illinois, it is unlikely that it will be registered with Illinois. If that is the case, and if B has no contact with Illinois which would require it to be registered as an out-of-State Use Tax collector for Illinois, then it could obtain a resale number which would provide it the wherewithal to supply a required number to A in conjunction with a Certificate of Resale. We hope the following descriptions of out-of-State Use Tax collectors and persons who qualify for resale numbers will be useful.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts of sales and must collect the corresponding Use Tax incurred by purchasers.

So long as B does not accept purchase orders in Illinois, and so long as the items it sells are not located in Illinois at the time it sells them, it need not register as a retailer.

Out-of-State sellers who fall under the definition of a "retailer maintaining a place of business in this State" (86 Ill. Adm. Code Sec. 150.201(I), enclosed), must register to collect Illinois Use Tax from Illinois customers and remit that tax to the Department. See 86 Ill. Adm. Code Sec. 150.801(c), enclosed. The retailer must collect and remit Use Tax to the State on behalf of his Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The provisions of this regulation are subject to the U.S. Supreme Court ruling of *Quill v. North Dakota*, 112 S.Ct. 1902 (1991), in which the Supreme Court set forth guidelines for determining what nexus requirements must be met before a business is properly subject to a state's tax laws. *Quill* invoked a two-prong analysis consisting of 1) whether the Due Process Clause is satisfied, and 2) whether the Commerce Clause "substantial nexus" test is met before the state can impose tax collection responsibilities.

Notwithstanding the fact that due process has been met, a business must also have a physical presence in the taxing state in order for the "substantial nexus" test to be met under the Commerce Clause and before a state can impose tax collection responsibilities on an out-of-State retailer. A physical presence does not mean simply an office or other physical building. Under Illinois tax law, it also includes the presence of any representative or other agent of the seller. The representative need not be a sales representative, and it is immaterial for tax purposes that the representative's presence is temporary.

If B has no contact with Illinois, it does not fall within the definition of a "retailer maintaining a place of business in this State," and it need not register as an out-of-State Use Tax collector.

Resale numbers are issued to persons who make no taxable sales in Illinois but who need the wherewithal to provide suppliers with Certificates of Resale when purchasing items that will be resold. So long as B does not act as an Illinois retailer and so long as it does not fall under the definition of a

"retailer maintaining a place of business in this State," its sales to Illinois customers are not subject to Illinois Retailers' Occupation Tax liability and it cannot be required to act as a Use Tax collector. So long as this is true, it qualifies for a resale number, which does not require the filing of tax returns with the Department. Information about acquiring a resale number can be obtained by calling the Department's Central Registration Unit at (217) 785-3707.

Please note that the fact that B may not be required to act as a Use Tax collector for Illinois does not relieve its Illinois purchaser of Use Tax liability. Therefore, if B does qualify for a resale number, its customer would have to pay its tax liability directly to the Illinois Department of Revenue.

Section 2c of the Retailers' Occupation Tax Act contains the following provision that would allow "other evidence" to be submitted by a purchaser to document the fact that its sale is for resale:

"Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale or that a particular sale is a sale for resale." 35 ILCS 120/2c

Such evidence could consist of, for example, an invoice from B to its customer, showing that the item was actually resold, along with a statement from B explaining why it had not obtained a resale number and certifying that the purchase was a purchase for resale in Illinois. While "other evidence" is acceptable under the law, we prefer that B obtain a resale number and provide that number on a Certificate of Resale. Illinois tax auditors are likely to scrutinize "other evidence" more closely than a Certificate of Resale.

The statements regarding "E" numbers, in the copy of Publication 104 that you submitted with your letter, continue to be correct. Organizations that make application to the Department and are determined to be exclusively charitable, religious, or educational receive a tax exemption identification number ("E" number). Organizations that have secured tax exemption identification numbers from the Department are exempt from Use Tax when purchasing tangible personal property for use in furtherance of organizational purposes, and retailers do not incur Retailers' Occupation Tax on such sales. See 86 Ill. Adm. Code 130.2007, enclosed. If organizations do not have E numbers, then their purchases are subject to tax. It is important to note that only sales of tangible personal property invoiced to the organization itself are exempt, and sales to individual members of the organization are taxable.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

ST 99-0127-GIL

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk

Enc.